

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

JESSICA DIAZ ROSARIO,

Plaintiff,

vs.

VINEYARD CHRISTIAN SCHOOL,
AMARILIS GALINDO,

Defendants.

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SA-23-CV-00436-FB

**REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE**

To the Honorable United States District Judge Fred Biery:

This Report and Recommendation concerns the above-styled cause of action. All non-dispositive pretrial matters in this case have been referred to the undersigned for disposition pursuant to Western District of Texas Local Rule CV-72 and Appendix C. The undersigned has authority to enter this recommendation pursuant to 28 U.S.C. § 636(b)(1)(B). For the reasons set forth below, it is recommended that this case be dismissed for want of prosecution.

I. Background and Analysis

Plaintiff, who is proceeding *pro se*, initiated this case on April 10, 2023, by filing a motion to proceed *in forma pauperis*. Plaintiff's Complaint names two Defendants—Vineyard Christian School and Amarilis Galindo—and alleges violations of Title VII of the Civil Rights Act of 1964. The Court granted Plaintiff's motion on April 26, 2023, and ordered service of Plaintiff's Complaint on Defendants. In the order, the Court directed Plaintiff to submit to the Clerk's Office a fully completed United States Marshals Service Form 285, including fully complete addresses, for each Defendant required to be served. The order also directed the

United States Marshals Service to serve each Defendant with a copy of the Complaint and a copy of this order by certified mail, return receipt requested. To date, there is no indication on the docket that Plaintiff has complied with the Court's order. Additionally, no further action has occurred in this case since Plaintiff filed her motion to proceed *in forma pauperis* on April 10, 2023.

The Court issued a Show Cause Order on August 7, 2023, recounting the procedural history of this case and directing Plaintiff to show cause why this case should not be dismissed for want of prosecution on or before August 14, 2023. Plaintiff did not file a show cause response. To date, Plaintiff still has not requested issuance of summons, and no other action has been taken in this case.

A district court may dismiss an action for failure to prosecute or to comply with any order of the court. *McCullough v. Lynaugh*, 835 F.2d 1126, 1127 (5th Cir.1988) (per curiam); Fed. R. Civ. P. 41(b). The undersigned will therefore recommend dismissal of this case for want of prosecution and failure to follow a court order.

II. Conclusion and Recommendation

Having considered the record in this case and governing law, the undersigned recommends that this case be **DISMISSED FOR WANT OF PROSECUTION**.

III. Instructions for Service and Notice of Right to Object/Appeal

The United States District Clerk shall serve a copy of this report and recommendation on all parties by either (1) electronic transmittal to all parties represented by attorneys registered as a "filing user" with the clerk of court, or (2) by mailing a copy to those not registered by certified mail, return receipt requested. Written objections to this report and recommendation must be filed **within fourteen (14) days** after being served with a copy of same, unless this time period is

modified by the district court. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). The party shall file the objections with the Clerk of Court and serve the objections on all other parties. A party filing objections must specifically identify those findings, conclusions or recommendations to which objections are being made and the basis for such objections; the district court need not consider frivolous, conclusive or general objections. A party's failure to file written objections to the proposed findings, conclusions and recommendations contained in this report shall bar the party from a *de novo* determination by the district court. *Thomas v. Arn*, 474 U.S. 140, 149–52 (1985); *Acuña v. Brown & Root, Inc.*, 200 F.3d 335, 340 (5th Cir. 2000). Additionally, failure to file timely written objections to the proposed findings, conclusions and recommendations contained in this report and recommendation shall bar the aggrieved party, except upon grounds of plain error, from attacking on appeal the un-objected-to proposed factual findings and legal conclusions accepted by the district court. *Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1428–29 (5th Cir. 1996) (en banc).

IT IS SO ORDERED.

SIGNED this 22nd day of August, 2023.



ELIZABETH S. ("BETSY") CHESTNEY
UNITED STATES MAGISTRATE JUDGE